

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DONALD FEREBE

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

FILED
DISTRICT COURT
DISTRICT OF MARYLAND
2008 MAR 19 P 3:39

CLERK'S OFFICE
AT BALTIMORE

Civil Action No. L-08-365

Criminal Action No. L-96-0401

MEMORANDUM

Pending are Donald Ferebe's ("Ferebe") pro se Motion Requesting Permission to File a Successive Motion and Motion to Vacate. For the reasons stated herein, the Motions ARE DENIED.

I. Background

On July 8, 2007, the Court sentenced Ferebe to life imprisonment for his convictions of a violent crime (murder) in furtherance of racketeering activity and possession of a weapon in connection with a crime of violence, in violation of 18 U.S.C. § 1959(a)(1) and 18 U.S.C. § 924(c). The United States Court of Appeals for the Fourth Circuit affirmed the convictions and sentences on September 23, 1999. On July 11, 2003, Ferebe filed a 28 U.S.C. § 2255 Motion to vacate which was denied as time-barred on September 4, 2003. See United States v. Ferebe, Criminal No. L-96-0401 (D. Md.) at Docket Nos. 57 & 58. Reconsideration was denied. On March 18, 2004, the Fourth Circuit declined to issue a certificate of appealability and dismissed the appeal.

The instant filing, raising several grounds attacking the convictions and sentences, was alternatively construed as a Motion requesting permission to file a successive 28 U.S.C. § 2255

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Motion to Vacate and as a Motion to Vacate. See United States v. Ferebe, Criminal No. L-96-0401 (D. Md.) at Docket Nos. 72 & 73.

II. Discussion

Ferebe filed a 28 U.S.C. § 2255 petition in 2003. The instant Motion, therefore, is a successive collateral challenge to his convictions and sentences. Successive motions under § 2255 may not be filed absent leave to do so from a federal court of appeals. See 28 U.S.C. §§ 2244(b)(3)(A), 2255; In re Avery W. Vial, 115 F.3d 1192, 1197-98 (4th Cir.1997). Because Ferebe has not obtained prior authorization from the United States Court of Appeals for the Fourth Circuit to bring a successive 28 U.S.C. § 2255 action, the motion must be dismissed for lack of jurisdiction. See Evans v. Smith, 220 F.3d 306, 325 (4th Cir. 2000). Moreover, as the authorization for filing a successive action exclusively lies in the circuit courts, this Court is without jurisdiction to grant or deny same.

III. Conclusion

Accordingly, the Court hereby DENIES Ferebe's Motion Requesting Permission to File a Successive Motion and Motion to Vacate. A separate Order follows.¹

Dated this 19th day of March, 2008.


Benson Everett Legg
Chief Judge

¹ The Clerk shall mail Ferebe the instructions and form packet for filing a motion under 28 U.S.C. § 2244 (authorization for District Court to consider second or successive application for relief).